

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HYSTER COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -3592

Decision No. CU

3157

Counsel for claimant:

Black, Helterline, Beck & Rappleyea  
By George C. Spencer, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$55,831.40, was presented by HYSTER COMPANY and is based upon the asserted ownership and loss of certain personal property.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are

a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

The record shows that claimant was organized in Oregon and reorganized in Nevada in 1957, and that at all pertinent times more than 50% of its outstanding capital stock was owned by nationals of the United States. An officer of claimant has certified that over 99% of its outstanding shares were owned by United States nationals at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant was engaged in the business of manufacturing and selling industrial lift trucks. Generally claimant sold its products under a conditional sales agreement providing for the lease of the equipment at a stipulated rental accompanied by an option on the part of the lessee to purchase the equipment.

The record contains: copies of such agreements with the North River Terminal Company, Inc., a New York corporation; a copy of a promissory note relating to the said agreements, payment of which was guaranteed by Ward-Garcia Corporation, a Delaware entity; a copy of a chattel mortgage in favor of claimant relating to the sale of lift trucks to the North River Terminal Company, Inc.; a copy of a guaranty of payment document executed by the guarantor; and extracts of claimant's pertinent bookkeeping records.

It further appears from the record that claimant sued the North Terminal Company, Inc., and the Ward-Garcia Corporation in New York on account of unpaid amounts pursuant to the said agreements, and that a default judgment in the amount of \$49,802.48 plus interest and court costs was entered in claimant's favor on September 21, 1961.

This claim involves only seven lift trucks out of the many that were covered under the agreements. The record indicates that these lift trucks were transferred by the lessee to Havana, Cuba, where they were appropriated by the Government of Cuba. A copy of a certificate from the office of the Sheriff of New York County shows that execution of the judgment was returned unsatisfied. Claimant states that it has neither recovered the seven lift trucks nor been paid therefor.

The Commission finds, on the basis of the entire record and in the absence of evidence to the contrary, that the seven lift trucks belonging to claimant were appropriated by the Government of Cuba on or about July 3, 1959, as stated by claimant, and that claimant thereby sustained a loss within the meaning of Title V of the Act.

Claimant asserts that its loss was \$55,831.43 for the seven lift trucks, based upon unit prices of \$7,820.00 for each of four of them and \$8,183.80 for the other three, relying upon the values set forth in the agreements. Copies of claimant's bookkeeping records disclose that four of the lift trucks, identified as Model TC-40, had a "Dealers Net" value of \$4,460.00 each when manufactured, and that the other three, identified as Model S60A, had a "Dealers Net" value of \$5,340.00 each when manufactured.

Upon careful consideration of the entire record, the Commission finds that the most appropriate basis of valuation of the seven lift trucks is the "Dealers Net," as shown by claimant's records. It appears, however, that these trucks were manufactured in 1957, as stated by

claimant in the official form. Accordingly, the Commission concludes that the aggregate value of the seven lift trucks in 1957 was \$33,860.00. Taking into consideration that the trucks were two years old on the date of taking, the Commission finds that the value of the seven trucks on that date was \$24,395.00, and that claimant suffered a loss in the amount of \$24,395.00 within the meaning of Title V of the Act.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HYSTER COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Twenty-four Thousand Three Hundred Ninety-five Dollars (\$24,395.00) with interest thereon at 6% per annum from the date of loss to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

3 OCT 1957

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Feidberg*  
Sidney Feidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)